



County of Los Angeles
CHIEF EXECUTIVE OFFICE

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Chief Executive Officer

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July 14, 2009

REVISED

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

19 August 4, 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**ACCESSING CRIMINAL HISTORY INFORMATION ON COUNTY EMPLOYEES AND
CANDIDATES FOR EMPLOYMENT WITH THE COUNTY OF LOS ANGELES
(ALL DISTRICTS) (3-VOTES)**

SUBJECT

The recommendation of the Chief Executive Officer (CEO) and the Acting Director of Personnel is to replace the Board Resolution of November 10, 1998 regarding criminal history background checks (Attachment I) with a new resolution (Attachment II) that will provide the authority to expand current access to State and local summary criminal history information to include access to federal-level criminal history information on County employees and candidates for employment with the County of Los Angeles.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve the new resolution (Attachment II) to authorize the Director of Personnel and each appointing authority to access federal, State, and local summary criminal history information for employment purposes.

Instruct the Acting Director of Personnel to:

- a. Immediately implement, on a prospective basis, all the provisions of the resolution, including federal access, for the most highly qualified executive recruitment candidates for department head positions and the next two levels down (Chief Deputies and Assistants/Deputies), as defined in the Charter of the County of Los Angeles Section 33(c) and (i) and update Board and County policy as necessary;

- b. Continue the current criminal background check for State and local summary criminal history information for all other employees, on the occasion of transfers, promotions and new hires; hiring of contract personnel; and volunteers; and conduct a feasibility study to consider expanding such background checks to include federal criminal background checks;
- c. Exempt minor volunteers under the age of 14, and compensated election personnel who work less than three days per election, as approved by the Department of Human Resources and update appropriate County policies; and
- d. Work with the CEO to study the feasibility of phasing in the implementation of local, State and federal criminal background checks for:
 - ~~New hires and~~ All current employees, including those who have not transferred or promoted since the Live Scanning policy went into effect in 1998;
 - Existing and future contractors; and
 - Existing and future volunteers.

PURPOSE /JUSTIFICATION OF RECOMMENDED ACTION

The current Board resolution on accessing criminal history for employment purposes is limited to State and local information. The new resolution will allow access for federal-level information as well. This will allow for a more comprehensive evaluation of the most highly qualified applicants for executive-level positions. Screening the backgrounds of these individuals to determine if they have criminal convictions that are incompatible with the duties of high-level sensitive positions is vital to County operations and public protection. All other Board requirements relating to criminal background checks remain in effect, such as designation of sensitive positions and the standards for determining the types of convictions that warrant withholding of employment or appointment to these positions.

The recommendation to exempt minor volunteers (under age 14) and compensated election personnel who work less than three days per election will resolve issues that came up during the DHR Live Scan audit process. Related Board and County policies will be updated as appropriate.

It is proposed that CEO and Department of Human Resources explore the feasibility of applying the nationwide provisions of the new resolution to existing County staff, volunteers, and contract personnel in phases at a later date. As part of the feasibility study, we will need to meet and confer with all employee unions. Any proposed implementation

plan must recognize current budgetary constraints. Such a plan must also include specific provisions to address circumstances where it is determined that an existing employee can no longer stay in a sensitive position and should consider the County's flexibility and capacity to make reassignments as needed. Once those matters have been resolved, we will come back to your Board with the results of the feasibility study.

Recently, the Department of Human Resources conducted a Countywide review of departmental practices relating to criminal background checks in response to your Board's order dated October 28, 2008 (Attachment III). Departments reported that approximately 35% of the current workforce has not been fingerprinted or does not have a "flag" in the Department of Justice system to notify the County of subsequent arrests/convictions. The review identified several issues such as the need to fingerprint current County employees, especially those who provide services to children, the type of contractors and volunteers that are subject to Live Scan, the limitations and requirements relating to fingerprinting minors, and job suitability determinations for court referrals. These issues will also be addressed in the feasibility study.

Implementation of Strategic Plan Goals

The County Strategic Plan directs that we maximize the effectiveness of processes, structure, and operations to support timely delivery of customer-oriented and efficient public services (Goal 1). A comprehensive criminal background check is one of the methods to ensure that the individuals who are entrusted with performing the duties related to this goal have backgrounds that are compatible with County employment. It is especially critical that there be immediate implementation of the resolution's provisions for those individuals who are appointed to executive-level positions and have the responsibility for ensuring this goal is carried out within their organizational units, as they must demonstrate that their conduct, both present and past, reflects the integrity required of a high-level County official.

FISCAL IMPACT/FINANCING

There will be no increase in costs as a result of adoption of this resolution and limiting implementation to the most highly qualified executive-level, unclassified sensitive positions. Funds are budgeted within each County department for this purpose. The fiscal impact for all other sensitive positions will be detailed in the feasibility study that will be submitted at a later date.

FACTS AND PROVISIONS/ LEGAL REQUIREMENTS

On November 10, 1998, your Board authorized the County to access State and local summary criminal history information for employment purposes for persons in sensitive positions, whether those persons are employees of the County or perform services

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pursuant to contract. However, the County now requires the authority to access that information on a federal basis as many candidates for County employment in executive-level unclassified sensitive positions have resided and worked outside of the state of California and it is essential that a comprehensive nationwide review of their background take place. Penal Code Section 11105(b)(11) authorizes cities, counties and districts to access federal level criminal history information with the express authority of their local governing body, which for the County of Los Angeles is your Board. The attached resolution will provide such express authority.

IMPACT ON CURRENT SERVICES

The recommendations contained herein to expand the current background check program to access federal criminal history information, and to update County policy to immediately implement these provisions for candidates for executive-level unclassified sensitive positions, is designed to strengthen the County's employment practices to ensure that high-level County officials have backgrounds suitable for their employment based on County standards.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:EFS:LMG
SKT:egf

Attachments (3)

c: Chief Executive Officer
Acting County Counsel
Executive Officer, Board of Supervisors

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY
OF LOS ANGELES DECLARING ITS INTENTION TO PROVIDE FOR THE
ACCESS OF CRIMINAL HISTORY INFORMATION FOR EMPLOYMENT
IN SENSITIVE POSITIONS**

WHEREAS, Penal Code Sections 11105(b)(10) and 13300(b)(10) authorize counties to access state and local summary criminal history information for employment purposes; and

WHEREAS, Penal Code Sections 11105(b)(10) and 13300(b)(10) provide that there be a requirement for or exclusion from employment based on specific criminal conduct by the person who is the subject of the record.

NOW, THEREFORE BE IT RESOLVED by the Board of Supervisors of the County of Los Angeles that:

(1) The Director of Personnel and each appointing authority of the County be authorized to access summary criminal history information for employment purposes in such sensitive positions as identified by the Director of Personnel and the appointing authority; and

(2) The County of Los Angeles shall consider as sensitive any position involving duties which pose a potential threat or risk to the County or to the public when performed by persons who have a criminal history incompatible with those duties, whether those persons are employees of the County or perform those services pursuant to contract; and

(3) The County of Los Angeles shall not place a person in a sensitive position if he or she has been convicted of a felony or a misdemeanor; except that such conviction may be disregarded if it is determined that there were mitigating circumstances or that the conviction is not related to the position and poses no threat or risk to the County or to the public.

BE IT FURTHER RESOLVED that each County department shall review and identify its specific sensitive positions. All departments must secure criminal conviction information on candidates being considered for positions within the following categories:

- Positions that involve the care, oversight, or protection of persons through direct contact with such persons.
- Positions having direct or indirect access to funds or negotiable instruments.
- Positions that require state and/or professional licensing.
- Positions that involve public safety and/or law enforcement.
- Positions that have access to or charge for drugs or narcotics.
- Positions that have access to confidential or classified information including criminal conviction information.
- Positions that involve the care, oversight, or protection of County, public, or private property.

Each appointing authority may establish additional categories of sensitive positions, with the approval of the Director of Personnel and of the Affirmative Action Compliance Officer.

Each department's personnel officer shall maintain the list of sensitive positions.

The Director of Personnel and the Affirmative Action Compliance Officer will periodically review this list.

BE IT FURTHER RESOLVED that the following procedures are adopted to safeguard the sensitive and private criminal history information.

The California Administrative Code requires criminal conviction information be released only to those persons with a legitimate need to know and only at the time they require such knowledge. Further, unauthorized disclosure of criminal history information is punishable as a crime. Therefore, each department's personnel officer is designated as the custodian of the information and will be responsible for its security and confidentiality. The personnel officer will establish the following procedures to maintain confidentiality, and may establish such additional procedures as are necessary to implement this policy:

- The information will be maintained under lock and key and will not leave the premises of the personnel office.
- The personnel officer will determine "need to know" and will ensure that only those individuals with a legitimate "need to know" are permitted to review the information.
- The personnel officer will maintain a log containing:
 - The name and title of the individual reviewing the information;
 - The date and time the individual examined the information in the personnel office;
 - The individual "need to know" reason for viewing the information; and,
 - The personnel officer's signature approving the examination of the information.

— All automated systems containing conviction information must be secured to prevent unauthorized access, alteration, deletion, or release of the information.

The foregoing resolution was on the 10th day of November 1990, adopted by the Board of Supervisors of the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.



JOANNE STURGES, Executive Officer,
Clerk of the Board of Supervisors
of the County of Los Angeles

By: Sylvia J. Villalobos
Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By: Lloyd W. Pellman
Deputy

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**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF LOS ANGELES**

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize counties to access state and local summary criminal history information for employment, licensing or certification purposes; and

WHEREAS, Penal Code Section 11105(b)(11) authorizes counties to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the Board of Supervisors of a county to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

NOW, THEREFORE BE IT RESOLVED by the Board of Supervisors of the County of Los Angeles that: the County of Los Angeles is hereby authorized to access state and federal level summary criminal history information for purposes of

employment (including volunteers and contract workers), and may not disseminate the information to a private entity; and

BE IT FURTHER RESOLVED that the County of Los Angeles shall not consider a person who has been convicted of a felony or misdemeanor involving moral turpitude eligible for employment (including volunteers and contract workers), except that such conviction may be disregarded if it is determined that mitigating circumstances exist, or that the conviction is not related to the employment, or work in question.

The foregoing resolution was on the 4th day of ~~June~~ ^{AUGUST} 2009, adopted by the Board of Supervisors of the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.



SACHI A. HAMAI
Executive Officer
Board of Supervisors

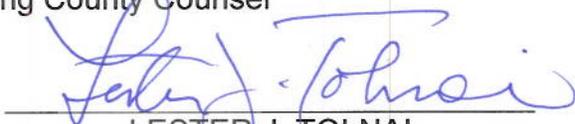
By


Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By


LESTER J. TOLNAI
Assistant County Counsel
Executive Office

LJT:mm



MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Sachi A. Hamai, Executive Officer-
Clerk of the Board of Supervisors
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

At its meeting held October 28, 2008, the Board took the following action:

38-C

The following item was called up for consideration:

Report by the Chief Executive Officer on the actions that have been taken to address items established, filled or staffed in the Department of Health Services relating to Criminal Background Investigations.

William T Fujioka, Chief Executive Officer, and Gregory Polk, Manager, Chief Executive Office; Michael J. Henry, Director of Personnel, and Epifanio Peinado, Senior Human Resources Manager, Department of Human Resources; Dr. John F. Schunhoff, Interim Director, James Jones, Administrative Deputy, and Ann Marinovich, Chief of Human Resources, Department of Health Services, responded to questions posed by the Board.

Arnold Sachs addressed the Board.

After discussion, on motion of Supervisor Antonovich, seconded by Supervisor Molina, unanimously carried (Supervisor Knabe being absent), the Board took the following actions:

1. Received and filed the attached report presented by the Director of Personnel, Michael J. Henry; and
2. Directed the Chief Executive Officer to report back in two weeks on the actions that have been taken or will be taken to address the following:
 - Items established in the Department of Health Services (DHS) and items filled or staffed by existing personnel to process criminal background investigations;

(Continued on Page 2)

38-C (Continued)

- Operational procedures established in DHS to ensure compliance with the Board Adopted Resolution, updated on November 2, 2007, on the Designation of Sensitive Positions and Requirements for Criminal History Information. These procedures should include both job nexus determinations and determinations on an employee's suitability for employment (Phase I and Phase II referenced in the Director of Personnel's report);
- Operational procedures established in DHS to ensure appropriate and timely communication with Hospital Chief Executive Officers and Program Directors, or their designees, regarding all determinations and findings regarding employees that require a criminal background investigation. The report should include time frames for processing background investigations;
- Actions that will be taken to evaluate Countywide compliance with criminal background investigation requirements; and
- The disposition and implementation status of the recommendations made by the Director of Personnel.

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Attachment

Copies distributed:

Each Supervisor
Chief Executive Officer
County Counsel
Director of Personnel
Interim Director of Health Services